

AMENDED IN SENATE MAY 7, 2003  
AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL** **No. 1005**

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**Introduced by Senator Dunn**

February 21, 2003

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An act to amend Sections 1279, 1280, 1280.1, and 1280.2 of, and to add Sections 1266.2 and 1279.1 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1005, as amended, Dunn. Fees: inspections: deficiencies: corrections.

Under existing law, a “health facility” means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, as specified, and includes, among others, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined. These facilities are regulated by the State Department of Health Services. A violation of the law relating to health facilities is a misdemeanor.

This bill would require the department to levy a fee on these health facilities in order to ensure an adequate level of licensing and certification staff to perform inspections, as required by this bill.

Under existing law, a general acute care hospital, acute psychiatric hospital, and special hospital, as defined, are required to pay an annual fee, as specified, plus \$8 per bed, with each new and renewal application for a license.

This bill would require that these facilities, when applying for a new license or a renewal of a license, pay a fee that may not exceed \$5 per bed, in addition to existing fees, as specified.

This bill would require the department to seek federal financial participation to match the above fees.

~~Existing law requires inspections, as specified, of health facilities, as specified, for which a license or special permit has been issued, with the exception of health facilities, other than general acute care hospitals, that are certified to participate in the Medicare or medicaid program.~~

~~This bill would require that the department ensure that periodic inspections conducted pursuant to existing law are not announced in advance of the date of the inspection. This bill would authorize the department to conduct inspections jointly with other entities, as specified, but would require that if the other entity provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.~~

~~Existing law requires the department to adopt regulations that establish minimum, specific, and numerical licensed nurse to patient ratios by licensed nurse classification and by hospital unit for general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined.~~

~~This bill would require the department to inspect for compliance with these requirements when conducting the above state or federal periodic inspections of a general acute care hospital.~~

~~Existing law exempts from periodic inspections specified health facilities, other than general acute care hospitals, that are certified to participate in the Medicare or medicaid program.~~

~~This bill would establish a complaint procedure for complaints involving health facilities, as defined, would establish inspection procedures and requirements, would authorize the department to issue citations, as specified, would require the department to notify the complainant and licensee in writing of the department's determination as a result of the inspection or investigation, would establish an informal conference procedure for resolution of complaints, at the request of the complainant, by the designee of the director for the county in which the health facility is located, and would establish appellate procedures for the complainant.~~

~~Existing law authorizes the department to provide consulting services, upon request, to any health facility, to assist in the~~



~~identification or correction of deficiencies or the upgrading of quality of care provided by the health facility. Existing law requires the department to notify the facility of deficiencies, and authorizes the department to take action to revoke or suspend the facilities license if the deficiencies are not corrected within a reasonable time.~~

~~This bill would provide that the time to correct the deficiencies may not exceed 180 days.~~

~~Existing law requires that if the health facility is a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, and the facility fails to implement a plan of correction, agreed on by the facility and the department, for deficiencies, the department may order implementation of the plan. Existing law also provides that if the facility and the department fail to agree on a plan of correction within a reasonable time, and if the deficiency poses an immediate and substantial hazard to the health or safety of patients, the director may take action to order implementation of a plan of correction devised by the department.~~

~~This bill would provide that the time to implement the plan of correction may not exceed 180 calendar days, that the time to agree on a plan shall not exceed 60 days, and that the director may take action to order implementation of a plan of correction devised by the department if the deficiency poses a significant, rather than immediate and substantial, hazard to the health or safety of patients.~~

~~Existing law provides that if a condition within a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, poses an immediate and substantial hazard to the health or safety of patients, the department may make specified orders if the facility was cited after January 1, 1994.~~

~~This bill would, instead, authorize these actions if the deficiency poses a significant hazard, or if the department receives a complaint about a similar condition within 12 months of a complaint or a deficiency, or if the completion of a plan of correction for a significant hazard has not been documented by the department within 190 calendar days of the deficiency. This bill would provide that these provisions would not apply to a deficiency for which a facility was cited prior to January 1, 2004.~~

~~Existing law requires that reports on the results of each inspection of a health facility shall be prepared by the inspector or inspector team and shall be kept on file in the department along with the plan of correction~~

~~and health facility comments. Existing law authorizes the inspection report to include a recommendation.~~

~~This bill would require that the inspection report include a recommended date for reinspection in order to ensure compliance with the plan of correction, that a reinspection be conducted within 180 days of the deficiency, and that a reinspection may be conducted during a periodic inspection, discussed above.~~

~~Existing law provides that if a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, fails to correct a deficiency that poses an immediate and substantial hazard to the health or safety of patients, within the time specified in the plan of correction, the department may levy fines, as specified.~~

~~This bill would provide that the time period for correction must be the lesser of 180 days or the time specified in a plan of correction, and that failure to correct a deficiency may be substantiated by a subsequent complaint about a condition similar to the one that gave rise to the prior deficiency. The bill would authorize licensees to appeal the assessment of these civil penalties.~~

*Existing law contains provisions with respect to the inspection of, and the issuance of citation against, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined.*

*Existing law also establishes procedures with respect to the identification and correction of deficiencies or the upgrading of quality of care provided by these health facilities.*

*This bill would make various changes with respect to those provisions.*

*This bill, in addition, would establish complaint procedures for complaints involving health facilities, as specified.*

*This bill would make various changes to those provisions.*

Existing law states it is the intent of the Legislature that nothing in specified sections of law shall be construed to require the retrofitting of hospital buildings built prior to January 1, 1994, to meet seismic standards in effect on that date.

This bill would change that date to January 1, 2004.

Because a violation of the provisions of the bill would constitute a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1266.2 is added to the Health and Safety  
2 Code, to read:  
3 1266.2. (a) In order to ensure an adequate level of licensing  
4 and certification staff to perform inspections pursuant to the  
5 requirements of this article, and to enforce the requirements of this  
6 chapter, the department shall levy a fee not to exceed five dollars  
7 (\$5) per bed on health facilities licensed pursuant to subdivisions  
8 (a), (b), and (f) of Section 1250. This fee may not exceed the actual  
9 and reasonable costs of enforcement of this article and shall be in  
10 addition to the license fees levied pursuant to paragraph (1) of  
11 subdivision (a) of Section 1266.  
12 (b) The department shall seek federal financial participation  
13 consistent with Title XIX (42 U.S.C. Sec. 1396 et seq.) of the  
14 federal Social Security Act to match the fees paid pursuant to  
15 subdivision (a).  
16 SEC. 2. Section 1279 of the Health and Safety Code is  
17 amended to read:  
18 1279. (a) Every health facility for which a license or special  
19 permit has been issued, except a health facility, as defined in  
20 subdivisions (b) to (k), inclusive, of Section 1250, that is certified  
21 to participate either in the Medicare program under Title XVIII (42  
22 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or in  
23 the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et  
24 seq.) of the federal Social Security Act, or both, shall be  
25 periodically inspected by a representative or representatives  
26 appointed by the state department, depending upon the type and  
27 complexity of the health facility or special service to be inspected.  
28 (b) If the health facility is deemed to meet standards for  
29 certification to participate in either the Medicare program or the  
30 medicaid program, or both, because the health facility meets the  
31 standards of an agency other than the Centers for Medicare and  
32 Medicaid Services, then, in order for the health facility to qualify  
33 for the exemption from periodic inspections provided in this

1 section, the inspection to determine that the health facility meets  
2 the standards of an agency other than the Centers for Medicare and  
3 Medicaid Services shall include participation by the California  
4 Medical Association to the same extent as it participated in  
5 inspections as provided in Section 1282 prior to the effective date  
6 of this section, as amended by S.B. 1779 of the 1991–92 Regular  
7 Session.

8 (c) Except as provided in subdivision (d), inspections shall be  
9 conducted no less than once every two years and as often as  
10 necessary to ensure the quality of care being provided.

11 (d) For a health facility specified in subdivision (a) or (b) of  
12 Section 1250, inspections shall be conducted no less than once  
13 every three years, and as often as necessary to ensure the quality  
14 of care being provided.

15 (e) During the inspection, the representative or representatives  
16 shall offer such advice and assistance to the health facility as they  
17 deem appropriate.

18 (f) For acute care hospitals of 100 beds or more, the inspection  
19 team shall include at least a physician, registered nurse, and  
20 persons experienced in hospital administration and sanitary  
21 inspections. During the inspection, the team shall offer such advice  
22 and assistance to the hospital as it deems appropriate.

23 (g) The department shall ensure that a periodic inspection  
24 conducted pursuant to this section is not announced in advance of  
25 the date of the inspection. An inspection may be conducted jointly  
26 with inspections by entities specified in Section 1282. However,  
27 if the department conducts an inspection jointly with an entity  
28 specified in Section 1282 that provides notice in advance of the  
29 periodic inspection, the department shall conduct an additional  
30 periodic inspection that is not announced or noticed to the health  
31 facility.

32 (h) Notwithstanding any other provision of law, the department  
33 shall inspect for compliance with Section 1276.4 during a state or  
34 federal periodic inspection, including, but not limited to, an  
35 inspection required under this section. This inspection  
36 requirement shall not limit the department's authority in other  
37 circumstances to cite for violations of Section 1276.4 or to inspect  
38 for compliance with Section 1276.4.

39 SEC. 3. Section 1279.1 is added to the Health and Safety  
40 Code, to read:

1 1279.1. (a) (1) Upon receipt of a written or oral complaint  
2 involving a health facility, ~~as defined in~~ *licensed pursuant to*  
3 *subdivision (a), (b), or (f) of Section 1250*, the department shall  
4 assign an inspector to make a preliminary review of the complaint,  
5 and shall notify the complainant within two working days of the  
6 receipt of the complaint of the name of the inspector. Unless the  
7 department determines that the complaint is willfully intended to  
8 harass a licensee or is without any reasonable basis, it shall conduct  
9 an onsite inspection or investigation within 10 working days of the  
10 receipt of the complaint. In any case in which the complaint  
11 involves a matter that creates a threat of imminent danger of death  
12 or serious bodily harm, the department shall make an onsite  
13 inspection or investigation within 24 hours of the receipt of the  
14 complaint. In any event, the complainant shall be promptly  
15 informed of the department's proposed course of action and of the  
16 opportunity to accompany the inspector on the inspection or  
17 investigation of the facility. Upon the request of either the  
18 complainant or the department, the complainant, or a family  
19 member or other representative of the complainant, or both, may  
20 be allowed to accompany the inspector to the site of the alleged  
21 violations during his or her tour of the facility, unless the inspector  
22 determines that the privacy of any patient would be violated.

23 (2) When conducting an onsite inspection or investigation  
24 pursuant to this section, the department shall collect and evaluate  
25 all available evidence and may issue a citation based upon, but not  
26 limited to, all of the following:

27 (A) Observed conditions.

28 (B) Statements of witnesses.

29 (C) Facility records.

30 (3) Within 10 working days of the completion of the complaint  
31 investigation, the department shall notify the complainant and  
32 licensee in writing of the department's determination as a result of  
33 the inspection or investigation.

34 (b) (1) When the department provides notice pursuant to  
35 paragraph (3) of subdivision (a), the department shall notify the  
36 complainant of the right to an informal conference.

37 (2) A complainant who is dissatisfied with the department's  
38 determination regarding a matter that would pose a threat to the  
39 health, safety, security, welfare, or rights of a patient may, within  
40 five business days after receipt of the notice, notify the director in



1 writing of his or her request for an informal conference. The  
2 informal conference shall be held with the designee of the director  
3 for the county in which the health facility that is the subject of the  
4 complaint is located. The health facility may participate as a party  
5 in the informal conference. The director's designee shall notify the  
6 complainant and licensee of his or her determination within 10  
7 working days after the informal conference and shall notify the  
8 complainant and licensee in writing of the appeal rights provided  
9 in subdivision (c).

10 (c) If the complainant is dissatisfied with the determination of  
11 the director's designee, the complainant may, within 15 days after  
12 receipt of this determination, notify in writing the Deputy Director  
13 of the Licensing and Certification Division of the department, who  
14 shall assign the request to a representative of the Complainant  
15 Appeals Unit for review of the facts that led to the determination.  
16 As a part of the Complainant Appeals Unit's independent  
17 investigation, and at the request of the complainant, the  
18 representative shall interview the complainant in the district office  
19 where the complaint was initially referred. If the health facility so  
20 requests, the representative shall also interview representatives of  
21 the health facility. This interview shall be conducted separately  
22 from the interview of the complainant. Based upon this review, the  
23 Deputy Director of the Licensing and Certification Division of the  
24 department shall make his or her own determination and notify the  
25 complainant and the health facility within 30 days.

26 (d) For purposes of this section, "complaint" means any oral  
27 or written notice to the department, other than a report from the  
28 facility, of an alleged violation of applicable requirements of state  
29 or federal law or an allegation of facts that might constitute a  
30 violation of applicable requirements of state or federal law.

31 SEC. 4. Section 1280 of the Health and Safety Code is  
32 amended to read:

33 1280. (a) The department may provide consulting services  
34 upon request to any health facility to assist in the identification or  
35 correction of deficiencies or the upgrading of the quality of care  
36 provided by the health facility.

37 (b) The department shall notify the health facility of all  
38 deficiencies in its compliance with this chapter and the rules and  
39 regulations adopted hereunder, and the health facility shall agree  
40 with the department upon a plan of correction that shall give the





1 health facility a reasonable time to correct these deficiencies. The  
2 time given to ~~the health facility~~ *a health facility licensed pursuant*  
3 *to subdivision (a), (b), or (f) of Section 1250 to correct the*  
4 *deficiencies may not exceed 180 calendar days. The facility may*  
5 *request an extension of the period of time within which to correct*  
6 *the deficiencies, except for a violation of Section 1276.4 or any*  
7 *other staffing requirement. This request shall be in writing and*  
8 *shall state facts sufficient to demonstrate good cause for the*  
9 *extension and that patients will not be exposed to a significant*  
10 *hazard if the extension is granted. The request shall be received by*  
11 *the department no less than 60 days prior to the expiration of the*  
12 *time within which to correct the deficiencies. The department may*  
13 *approve the request for an extension of time if the department finds*  
14 *that the extension is for good cause and that no patient will be at*  
15 *risk of significant hazard if the extension is granted. If the*  
16 *department grants the extension, the department shall provide to*  
17 *the original complainant or his or her representative notice of the*  
18 *extension 30 days prior to the date required for implementation of*  
19 *the plan for corrections. If at the end of the allotted time, as*  
20 *revealed by inspection, the health facility has failed to correct the*  
21 *deficiencies, the director may take action to revoke or suspend the*  
22 *license.*

23 (c) (1) In addition to subdivision (a), if the health facility is  
24 licensed under subdivision (a), (b), or (f) of Section 1250, and if  
25 the facility fails to implement, *within a reasonable time*, a plan of  
26 correction that has been agreed upon by both the facility and the  
27 department ~~within a reasonable time~~, the department may order  
28 implementation of the plan of correction previously agreed upon  
29 by the facility and the department. The time given to the health  
30 facility to implement the plan of correction may not exceed 180  
31 calendar days. *The facility may request an extension of the period*  
32 *of time within which to implement the plan of correction, except for*  
33 *a violation of Section 1276.4 or any other staffing requirement.*  
34 *This request shall be in writing and shall state facts sufficient to*  
35 *demonstrate good cause for the extension and that patients will not*  
36 *be exposed to a significant hazard if the extension is granted. The*  
37 *request shall be received by the department no less than 60 days*  
38 *prior to the expiration of the time within which to implement the*  
39 *plan of correction. The department may approve the request for an*  
40 *extension of time if the department finds that the extension is for*

1 *good cause and that no patient will be at risk of significant hazard*  
2 *if the extension is granted. If the department grants the extension,*  
3 *the department shall provide to the original complainant or his or*  
4 *her representative notice of the extension 30 days prior to the date*  
5 *required for implementation of the plan for corrections. If the*  
6 *facility and the department fail to agree upon a plan of correction*  
7 *within a reasonable time, which may not exceed 60 days, and if the*  
8 *deficiency poses a significant hazard to the health or safety of*  
9 *patients, then the director may take action to order implementation*  
10 *of a plan of correction devised by the department. The order shall*  
11 *be in writing and shall contain a statement of the reasons for the*  
12 *order. If the facility does not agree that the deficiency poses a*  
13 *significant hazard to the health or safety of patients, or if the*  
14 *facility believes that the plan of correction will not correct the*  
15 *hazard, or if the facility proposes a more efficient or effective*  
16 *means of remedying the deficiency, the facility may, within 10*  
17 *days of receiving the plan of correction from the department,*  
18 *appeal the order to the director. The director shall review*  
19 *information provided by the facility, the department, and other*  
20 *affected parties and, within a reasonable time, shall render a*  
21 *decision in writing that shall include a statement of reasons for the*  
22 *order. During the period in which the director is reviewing the*  
23 *appeal, the order to implement the plan of correction shall be*  
24 *stayed. The opportunity for appeal provided pursuant to this*  
25 *subdivision shall not be deemed to be an adjudicative hearing and*  
26 *is not required to comply with Section 100171.*

27 (2) If any condition within a health facility licensed under  
28 subdivision (a), (b), or (f) of Section 1250 poses a significant  
29 hazard to the health or safety of patients, ~~or if the department~~  
30 ~~receives a complaint about a similar condition within 12 months~~  
31 ~~of a complaint or a deficiency,~~ or if completion of a plan of  
32 correction for a significant hazard has not been documented by the  
33 department within ~~180 calendar days of the deficiency;~~ *the agreed*  
34 *period of time for the implementation of the plan of correction,* the  
35 department may order either of the following until the hazardous  
36 condition is corrected:

37 (A) A reduction in the number of patients or a ban on the  
38 admission of patients.

39 (B) The closure of all or part of the unit or units within the  
40 facility that pose the risk. If the unit to be closed is an emergency

room in a designated facility, as defined in Section 1797.67, the department shall notify and coordinate with the local emergency medical services agency.

(3) The facility may appeal an order pursuant to paragraph (2) by appealing to the superior court of the county in which the facility is located.

(4) Paragraph (2) shall not apply to a deficiency for which the facility was cited prior to January 1, 2004.

(d) Reports on the results of each inspection of a health facility shall be prepared by the inspector or inspector team and shall be kept on file in the department along with the plan of correction and health facility comments. The inspection report shall include a recommended date for reinspection in order to ensure compliance with the plan of correction. The reinspection may not be more than 180 days after the citation of deficiency. A reinspection may be conducted during a periodic inspection required pursuant to Section 1279. Inspection reports of an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing shall be provided by the department to the appropriate regional center pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(e) All inspection reports and lists of deficiencies shall be open to public inspection when the department has received verification that the health facility has received the report from the department. All plans of correction shall be open to public inspection upon receipt by the department.

(f) In no event shall the act of providing a plan of correction, the content of the plan of correction, or the execution of a plan of correction, be used in any legal action or administrative proceeding as an admission within the meaning of Sections 1220 to 1227, inclusive, of the Evidence Code against the health facility, its licensee, or its personnel.

(g) *For purposes of this section, “significant hazard” means a condition as a result of which a patient has suffered, or is likely to suffer, serious injury, harm, impairment, or death.*

SEC. 5. Section 1280.1 of the Health and Safety Code is amended to read:

1280.1. (a) If a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250 fails to correct a

1 deficiency within the lesser of 180 days or the time specified in a  
2 plan of correction; *or within an extension of that time pursuant to*  
3 *Section 1280*, the department may assess the licensee a civil  
4 penalty in an amount not to exceed fifty dollars (\$50) per patient  
5 affected by the deficiency for each day that the deficiency  
6 continues beyond the date specified for correction. For purposes  
7 of this section, failure to correct a deficiency may be substantiated  
8 by a subsequent validated complaint about a condition similar to  
9 the one that gave rise to the deficiency. The civil penalties shall be  
10 assessed only for deficiencies that pose a significant hazard, *as*  
11 *defined in subdivision (g) of Section 1280*, to the health or safety  
12 of patients. If the licensee disputes a determination by the  
13 department regarding alleged failure to correct a deficiency or  
14 regarding the reasonableness of the proposed deadline for  
15 correction, the licensee may, within 10 days, request a hearing  
16 pursuant to Section 100171. Penalties shall be paid when appeals  
17 pursuant to those provisions have been exhausted.

18 (b) This section shall not apply to a deficiency for which a  
19 facility was cited prior to January 1, 1994.

20 (c) A licensee may appeal a civil penalty assessed pursuant to  
21 this section. If a civil penalty is appealed pursuant to this section,  
22 proceedings shall be conducted in accordance with Section  
23 100171.

24 (d) Civil penalties collected pursuant to this section shall be  
25 used for the purpose of enforcement of this chapter.

26 SEC. 6. Section 1280.2 of the Health and Safety Code is  
27 amended to read:

28 1280.2. (a) No deficiency cited pursuant to paragraph (2) of  
29 subdivision (b) of Section 1280 or Section 1280.1 shall be for the  
30 failure of a facility to meet the requirements of the California  
31 Building Standards Code if, as of January 1, 1994, the hospital  
32 building was approved under Chapter 12.5 (commencing with  
33 Section 15000) of Division 12.5, or if the hospital building was  
34 exempt from that approval under any other provision of law in  
35 effect on that date.

36 (b) It is the intent of the Legislature that neither the  
37 amendments made to Section 1280 by Chapter 1152 of the Statutes  
38 of 1993, nor Section 1280.1 shall be construed to require the  
39 retrofitting of hospital buildings built prior to January 1, 2004, to  
40 meet seismic standards in effect on that date.

1     SEC. 7. No reimbursement is required by this act pursuant to  
2     Section 6 of Article XIII B of the California Constitution because  
3     the only costs that may be incurred by a local agency or school  
4     district will be incurred because this act creates a new crime or  
5     infraction, eliminates a crime or infraction, or changes the penalty  
6     for a crime or infraction, within the meaning of Section 17556 of  
7     the Government Code, or changes the definition of a crime within  
8     the meaning of Section 6 of Article XIII B of the California  
9     Constitution.

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